

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 16-2504

THOMAS MEISSGEIER,

PETITIONER,

V.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before LANCE, *Chief Judge*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On July 21, 2016, the petitioner, through counsel, filed a petition for extraordinary relief in the nature of a writ of mandamus. In it, he asks the Court to order the Secretary to "eliminate delays in processing appeals" and "hold unconstitutional under the Due Process Clause of the Fifth Amendment to the Constitution any statute, regulation or practice that interferes with prompt and speedy appeals." Petition (Pet.) at 19. On July 27, 2016, the petitioner filed an opposed motion to consolidate his case with 16 other cases. The Court denied the motion to consolidate on September 14, 2016, as the petitioner provided no facts related to his case that warranted consolidation. On September 23, 2016, the Court ordered the petitioner to file an amended petition within 7 days, providing sufficient facts to determine whether a writ is warranted.

The Court received the amended petition on September 26, 2016. The petitioner states that he filed a claim for entitlement to service connection for sleep apnea on May 20, 2013. Amended Pet. at 5. VA denied his claim on November 13, 2014, and he filed a Notice of Disagreement on January 6, 2015. *Id.* VA issued a Statement of the Case (SOC) on March 25, 2015, and the petitioner perfected his appeal on November 9, 2015. *Id.* The petitioner contends that he has "heard nothing since." *Id.*

The Court notes that the petitioner has not asserted, much less demonstrated, that he has made any attempt to exhaust his administrative remedies to resolve his claim, to include contacting the regional office (RO), Director of Compensation, or Under Secretary for Benefits. Furthermore, he has still not sufficiently pled enough detail for the Court to determine whether extraordinary relief is required, to include whether he requested a Board hearing or submitted evidence to the RO after the issuance of the SOC, which would require the RO to issue a supplemental SOC. Finally,

pursuant to the Court's Rules of Practice and Procedure (Rules), a petition for extraordinary relief must "include an appendix containing copies of any order or decision or any other documents necessary to understand and support the petition." U.S. VET. APP. R. 21(a)(4). Here, the petitioner has submitted no documentation supporting the alleged facts presented in his petition.

However, despite these deficiencies in the petition, the petitioner contends that nearly a year has passed since he filed his Substantive Appeal and any action from VA. In light of this asserted delay, the Court will afford the petitioner the opportunity to provide additional information and submit any evidence documenting any steps he has taken to resolve this matter at the agency and supporting the facts he has alleged, as required by the Court's Rules. Should the petitioner fail to do so, the Court will dismiss the petition.

Accordingly, it is

ORDERED that, within 15 days after the date of this order, the petitioner will respond in a manner consistent with this order.

DATED: October 8, 2016

BY THE COURT:



ALAN G. LANCE, SR.

Chief Judge

Copies to:

John A. Chandler, Esq.

VA General Counsel (027)